Supreme Court, U.S.
FILED
07-877 OCT 11 2007
OFFICE OF THE CLERK

78

No. _____

In The

Supreme Court of the United States

JAMES WIDTFELDT, Appellant

v.

STATE OF NEBRASKA, HOLT COUNTY BOARD OF EQUALIZATION, TAX EQUALIZATION AND REVIEW COMMISSION, Appellee.

On Appeal From
The Nebraska Supreme Court (MT RHG DEN)

PETITION FOR WRIT OF CERTIORARI

James Widtfeldt
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October 11, 2007
December 17, 2007 (Fossum for Suter 10-18-07)

QUESTIONS PRESENTED

Questions Presented

1. Does failure of Nebraska to refund unused filing fees pursuant to mandatory provisions of Nebraska law, RRS 77-5015, for example, August 19, 2001, thereafter establish a date, the date of the original filing fee, August 19, 2001, for notice of appeal and payment of filing fees for successive real estate tax appeals, as though all successive appeals had been noticed and filing fees paid on August 19, 2001, for appeals in 2002, 2003 and 2004 etc?

QUESTIONS PRESENTED

2. Does a wrongful county attorney filed criminal action CR 05-422 in the Holt County Court, in violation of RRS 21,219, filed against a taxpayer alleging criminal trespass of a landowner inspecting landowner's rental on invitation of the renter who supposedly vacated and wanted rent back, which resulted in speeding the death of appellant's mother due to her efforts to protect appellant and take over rental business thereby contracting a fatal sickness, justify elimination of real estate and death taxes for appellant and deceased, under the Victims of Terrorism Tax Relief Act of 2001, section 103.

3. Does a series of Nebraska regulatory actions purporting to "protect" Hispanic renters, but actually designed to eliminate appellant as a source of housing favored by Hispanic renters, justify reduction in real estate valuations and real estate taxes on appurtenant housing on said real estate, in Nebraska?

QUESTIONS PRESENTED

4. Does a series of "disciplinary actions" against appellant, purporting to "purify" the legal system but actually designed to conceal wrongdoing by former Governor Ben Nelson and his seven appointed Democrats on the Nebraska Supreme Court, as well as conceal misbehavior permeating the Nebraska Bar, justify reduction of land values anticipating subjecting Nebraskans to further $145,000,000 penalty judgments for violation of federal law?

PARTIES TO THE PROCEEDING BELOW

James Widtfeldt is the only party to the proceedings below, other than the appellants.

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Entergy Arkansas, Inc. vs Nebraska, 226 F.

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Nebraska vs Widtfeldt, CR 05-422, Holt County Court 7

Strickland v. Washington, **46 US 668 (1984) 10**

"3 high court candidates advance", page B1 continued to B2 of the Omaha World - Herald Midlands Edition, September 1, 2006 8,17,18,25,27

Multicultural NAF vs James Widtfeldt, Inc., HUD Case No 07-07-0866-8-(2) 19-23

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James Widtfeldt, Inc., HUD Case No 07-07-0890-8 (8) Valdemar Gamboa 19-23

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(16) Santa Gamboa 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0895-8

(13) Estella Rodriguez 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0896-8

(12) Ricardo Garza 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0897-8

(4) Gerardo Pena 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0898-8

(10) Jesus Garza 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0899-8

(7) Martiza Garza 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0900-8

(5) Gloria Gonzales 19-23

James Widtfeldt, Inc., HUD Case No. 07-07-0901-8

(9) Gudelia Gonzales 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0902-8

(6) Florentino Garza 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0903-8

(3) Francisca Cantu 19-23

James Widtfeldt, Inc., HUD Case No 07-07-0904-8

(11) Elena Garza 19-23

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NEB 2-07/08-9-2249-H Valdemar Gamboa 19-23

NEB 2-07/08-9-2250-H Santa Gamboa 19-23

NEB 2-07/08-9-2251-H Ricardo Garza 19-23

NEB 2-07/08-9-2252-H Francisca Pruneda 19-23

NEB 2-07/08-9-2253-H Jesus Garza 19-23

NEB 2-07/08-9-2255-H Elena Garza 19-23

NEB 2-07/08-9-2254-H Florentino Garza 19-23

NEB 2-07/08-9-2256-H Lud'a Castillo-Perez 19-23

NEB 2-07/08-9-2257-H Francisca Cantu 19-23

NEB 2-07/08-9-2258-H Gudelia Gonzales 19-23

NEB 2-07/08-9-2259-H Gloria Gonzales 19-23

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TERC 05A-103, 104,105,106, 107 (selected parts)

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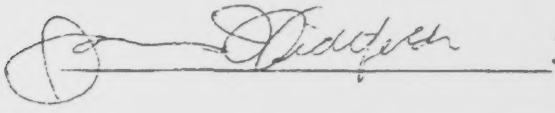
Appendix I:
W vs TERC, 15 Neb App 410, 728 NW2d 295

PETITION FOR WRIT OF CERTIORARI

Petitioner James Widtfeldt respectfully petitions for a writ of certiorari to review multiple orders of the Nebraska Supreme Court of July 11 and 13, 2007, appearing in the appendix at A and B.

PETITION FOR WRIT PRESENTED IN GOOD FAITH AND NOT FOR DELAY

This petition for Writ of Certiorari is certified as presented in good faith and not for delay. Rule 44.2



James Widtfeldt

JURISDICTION

This court has jurisdiction by its Order of November 6, 2006, through appeal Rule 13 within 90 days of judgment of highest State Court.

Rule 10b, gives jurisdiction. 28 USC § 1291 gives jurisdiction.

This court's jurisdiction is invoked pursuant to 28 USC § 167. Appeal is made of a series of Nebraska Supreme Court decisions dated July 11, 2007 and July 13, 2007. Because the decisions constitute a chain, each earlier decision is part of the appeal, and pursuant to Supreme Court Rule 14, is 90 days

following the final order.

RELEVANT STATUTORY PROVISIONS:

The relevant statutory provision is RRS 77-5015 and is reproduced in the appendix.

28 USC § 1291 jurisdiction

42 USC § 1983, Civil Rights Act

42 USC §§2021b-2021d Radioactive Waste Act

US Constitution, Amendment 1 and 5, right to redress

OPINIONS BELOW

There are two opinions being appealed, July 11 and 13, 2007, for which the time of

appeal is 90 days from the last order on July 13, 2007.

The decisions refuse appeal of Holt County Board of Equalization and Nebraska Tax Equalization and Review Commission decisions, for which appeal fees were overpaid by a series of filing fees never refunded, contrary to state law RRS 77-5015, which provides in its third sentence: "Any multiple filing fees for consolidated appeals shall be refunded by the commission if such fees were paid prior to the consolidation of the appeals by the commission".

STATEMENT OF REASONS TO GRANT PETITION FOR WRIT OF CERTIORARI

Petitioner buys real estate as an investment, the contested properties are in Holt County, Nebraska.

Holt County, Nebraska is rural and small town, and has generally suffered from decreasing population of about 1.2 percent per year, notwithstanding substantial immigration and increasing Hispanic population.

Part of the problem is a defective government in Nebraska which over values property in rural agricultural and small towns

This is a case involving over regulation through inaccurate grievances against James Widtfeldt personally and HUD and NAF claims of race discrimination fostered by the State of Nebraska and its agents, used to cover actual racism by Nebraska and its subunits and many racist lawyers and judges who filed grievances against James Widtfeldt to prevent James Widtfeldt practice of law.

NEBRASKA ACTIONS COUNTER

NEBRASKA LANDLORD TENANT ACT

In a Holt County Attorney filed case, Appendix C, Nebraska claimed that appellant had no right to visit Widtfeldt-landlord rental property to inspect for vacation claimed by a renter Ribera (Ribera was trying to trick landlord out of rent actually paid by the employer, 21st Century Growers, of Ribera). Nebraska vs Widtfeldt, CR 05-422 (later dismissed after Widtfeldt's counsel was able to obtain a judge other than Alan Brodbeck). The County Attorney filed the action directly in conflict with Nebraska law RRS 21,219.

Appendix D

Subsequently, Nebraska switched tactics away from overt racial abuses, now Nebraska is claiming falsely to protect renters from appellant, although the facts are exactly the opposite of the claim, shown by at least 10 years of harassment of appellant's minorities renters.

James Widtfeldt was a lawyer suspended by the all Ben Nelson Democrat Nebraska Supreme Court, appointed by Gov. Nelson of infamy in ***Entergy Arkansas vs Nebraska***, 226 F.Supp 2d 1047 (2002). Appendix E

Widtfeldt rented office space to US

Ecology in Butte, Nebraska 1989 through 1996.

Appellant was suspended for "bad pleadings", describing how local government attacked rental housing of Hispanics, and for pleading enough facts to prevent the biased but unimaginative Judge Alan Brodbeck from succeeding at most Brodbeck grievances, in which grievances Brodbeck typically claimed Brodbeck was not informed of some fact of which Brodbeck was in fact fully and repeatedly informed orally, but Brodbeck thought Widtfeldt could not prove the oral disclosure by "sloppy" Judge record keeping.

Effective assistance of counsel in *Strickland v. Washington*, 46 US 668, 684-5 (1984) was prevented by Nebraska by the bias of Brodbeck. Many appellant cases languish without successor counsel as pro bono, the grievances orchestrated by Judge Brodbeck prejudiced appellant's clients and fostered undeserved success to other lawyers, and created a paucity of successor counsel for former Widtfeldt clients.

MONEY TAKEN BY NEBRASKA,

RETAINED UNLAWFULLY

Appellant has been appealing real estate valuations since 2001, and in each year, the following filing fees were taken:

a) on August 16, 2001 appellant filed 13 tax protest appeals, submitted a filing fee of $325, (Tax Equalization and Review Commission) TERC immediately consolidated the cases into two (residential and agricultural), and TERC thereby became obligated, pursuant to RRS 77-5015, to return $275 to appellant, TERC has failed, refused and neglected to return the $275, and appellant has on account at TERC prepaid

filing fees of $275 to TERC on account of the payment of August 16, 2001;

b) on August 19, 2002, appellant filed 26 tax protest appeals, submitted a filing fee of $650 in one payment, and TERC promptly consolidated all the cases into two, one residential and one agricultural, and pursuant to RRS 77-5015 TERC thereby became obligated to return all but $50 of the filing fees, or $600 of credit at TERC in prepaid filing fees is on hand in favor of appellant as a result of the payment of August 19, 2002 and following TERC consolidation;

c) On August 22, 2003, $750 was paid for

30 filing fees on 30 appeals all in one check, and shortly thereafter TERC consolidated all the cases into two cases, and thereby became obligated to return $700 to appellant, and pursuant to RRS 77-5015 TERC thereby became obligated to return all but $50 of the filing fees, or $700 of credit at TERC in prepaid filing fees is on hand in favor of appellant as a result of the payment of August 22, 2003 and following TERC consolidation of the 30 appeals into two;

d) On August 24, 2004, appellant paid $100 for filing fees for four tax appeals to TERC, and immediately thereafter TERC consolidated

the cases into residential and agricultural, and thereby became obligated to return $50 to appellant, and pursuant to RRS 77-5015 TERC thereby became obligated to return all but $50 of the filing fees, or $50 of credit at TERC in prepaid filing fees is on hand in favor of appellant as a result of the payment of August 24, 2004 and following TERC consolidation of the 4 appeals into two;

e) On August 19, 2005 appellant paid $150 for 6 tax appeals to TERC and immediately thereafter TERC consolidated the cases into residential and agricultural, and thereby became obligated to return $100 to appellant,

and pursuant to RRS 77-5015 TERC thereby became obligated to return all but $50 of the filing fees, or $100 of credit at TERC in prepaid filing fees is on hand in favor of appellant as a result of the payment of August 19, 2005 and following TERC consolidation of the 6 appeals into two;

f) On August 22, 2006, appellant paid $100 filing fees for 4 tax appeals to TERC and immediately thereafter TERC consolidated the cases into residential and agricultural, and thereby became obligated to return $50 to appellant, and pursuant to RRS 77-5015 TERC thereby became obligated to return all but $50

of the filing fees, or $50 of credit at TERC in prepaid filing fees is on hand in favor of appellant as a result of the payment of August 22, 2006 and following TERC consolidation of the 4 appeals into two;

g) Appellant had on hand a credit on or before August 22, 2006, a total of $1,725.00 plus interest which at 1 percent a month would have been approximately $165 plus $288 plus $252 plus $12 plus $12 plus$50 of the $100 mailed that day, for a total of $2,216. RRS 77-5015 Appendix E.

NEBRASKA CONTINUES TO FIGHT FEDERAL CONTRACT AND US CONSTITUTION BILL OF RIGHTS LAW BY INACCURATE ACCUSATIONS AGAINST JAMES WIDTFELDT

James Widtfeldt rented office space to US Ecology, 1989 through 1996. Nebraska by then Governor Ben Nelson, breached contract with the Waste Commission in *Entergy Arkansas vs Nebraska*, 226 F.Supp 2d 1047 (Sept 30, 2002). The court faulted Ben Nelson. In a 1988 public initiative vote to leave the Compact, electors voted to stay in the compact and participate in the low level waste site

construction by 414,394 votes to 225, 174. The Ben Nelson Democrat fundraisers on the Nebraska Supreme Court are trying to hinder or eliminate private property rights, and limit or eliminate free speech, when it suits their political purposes.

Now most or all of the persons previously filing grievances claiming no racism existed in Holt County, against James Widtfeldt as a lawyer are filing accusations to attack rentals to Hispanics by Widtfeldt -- starting to show that the all Ben Nelson fundraisers on the Nebraska Supreme court are not racially unbiased, nor are the Ben Nelson Democrat

cronies in Holt County, Judge Alan Brodbeck and Forrest Peetz, racially correct.

Nebraska, on the signature of Donald Nesbitt and Ellen Ochoa, contrary to the statements of the renters, filed the following 29 cases (the renters rent from appellant James Widtfeldt because he protects them from the racism epidemic in Holt County, and in fact was the only landlord who would rent to many of the Hispanics in Holt County starting about 10 years ago):

Multicultural NAF vs

James Widtfeldt, Inc., HUD Case No 07-07-0866-8-(2) no renter identified

James Widtfeldt, Inc., HUD Case No 07-07-0888-8 (15) Francisca Pruneda

James Widtfeldt, Inc., HUD Case No 07-07-0890-8 (8) Valdemar Gamboa

James Widtfeldt, Inc., HUD Case No 07-07-0894-8 (16) Santa Gamboa

James Widtfeldt, Inc., HUD Case No 07-07-0895-8 (13) Estella Rodriguez

James Widtfeldt, Inc., HUD Case No 07-07-0896-8 (12) Ricardo Garza

James Widtfeldt, Inc., HUD Case No 07-07-0897-8 (4) Gerardo Pena

James Widtfeldt, Inc., HUD Case No 07-07-0898-8 (10) Jesus Garza

James Widtfeldt, Inc., HUD Case No 07-07-0899-8 (7) Martiza Garza

James Widtfeldt, Inc., HUD Case No 07-07-0900-8 (5) Gloria Gonzales

James Widtfeldt, Inc., HUD Case No. 07-07-0901-8 (9) Gudelia Gonzales

James Widtfeldt, Inc., HUD Case No 07-07-0902-8 (6) Florentino Garza

James Widtfeldt, Inc., HUD Case No 07-07-0903-8 (3) Francisca Cantu

James Widtfeldt, Inc., HUD Case No 07-07-0904-8 (11) Elena Garza

James Widtfeldt, Inc., HUD Case No 07-07-0905-8 (14) Ludivina Castillo Perez

Plus:

NEOC vs. James Widtfeldt, Inc. and James Widtfeldt (SP) in the following cases:

NEB 2-07/08-9-2249-H Valdemar Gamboa

NEB 2-07/08-9-2250-H Santa Gamboa

NEB 2-07/08-9-2251-H Ricardo Garza

NEB 2-07/08-9-2252-H Francisca Pruneda

NEB 2-07/08-9-2253-H Jesus Garza

NEB 2-07/08-9-2255-H Elena Garza

NEB 2-07/08-9-2254-H Florentino Garza

NEB 2-07/08-9-2256-H Ludivina Castillo-Perez

NEB 2-07/08-9-2257-H Francisca Cantu

NEB 2-07/08-9-2258-H Gudelia Gonzales

NEB 2-07/08-9-2259-H Gloria Gonzales

NEB 2-07/08-9-2260-H Martiza Garza

Neb 2-07/08-9-2261-H Gerardo Pena

Neb 2-07/08-9-2262-H Estella Rodriguez

All the above inaccurate accusations tend to and do reduce the value of the real estate of James Widtfeldt. The accusations claim that James Widtfeldt somehow "discriminated" by not supplying plumbing and electrical repairs (in the last several years great parts of the plumbing and electrical systems have been replaced, many dollars expended on roof, electrical and plumbing repairs during the same time of the alleged complaints.

The accusations are a shakedown, to attempt to impose fictitious costs and intimidate Hispanic renters into leaving O'Neill or James Widtfeldt renters, by stirring up trouble with housing, or attempting to destroy private residential housing to create an artificial need for far more expensive and poorly designed public housing, rather than any legitimate concern for the welfare of Hispanics.

RULE 10 PRIORITY STATE CONFLICTS

FEDERAL RULE 10 PRIORITY -- TAKING PROPERTY WITHOUT DUE PROCESS

The State of Nebraska comes within US

Supreme Court Rule 10b eligible for Supreme Court review, through the Ben Nelson legacy of all 7 appointed Nebraska Supreme Court Judges, and using its Court Disciplinary provisions to discipline this lawyer for supporting the US Congress prescribed Low Level Radioactive Waste Consortium, and to flout the federal court order in *Entergy Arkansas vs Nebraska*, 226 F. Supp 2d 1047 (Sep 30, 2002). The Republican governors succeeding Nelson have appointed only one Supreme Court Justice, a Republican , in 2006, a far lower turnover rate for judges.

Nebraska has launched dozens of cases

to interfere with appellant's successful renting to racial minorities, justifying lower real estate values for tax purposes.

PRAYER AND CONCLUSION:

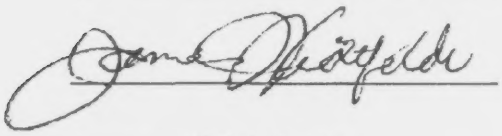
Petitioner requests that each order and judgment herein be reversed, and that this court determine that all appeals were timely filed, by the filing fee prepayments, and that appellant's land valuations be reduced by 50 percent of 2001 valuations and kept at half of all 2001 valuations of appellant from August 19, 2001 to the present, and that said valuations be continued at the said 50 percent discount from

the 2001 values at least 20 years into the future, or until such time as 20 years shall have elapsed from Nebraska violating or breaching any federal contract, whichever is later.

Petitioner prays that the regulatory actions taken by Nebraska, the government and other agencies be determined excessive for the valuations given, determined to violate the equal protections of the law, and violate the US Constitution takings clause of Amendment 5. Appellant prays for reinstatement to continue litigation sufficient to prevent the Ben Nelson appointed Democrats on the Nebraska Supreme Court from continuing an anti property anti

federal constitution, path likely to subject Nebraska to more large damage judgments from other states and compacts, such as water sharing compacts with Kansas and Colorado.

(Redone 12-17-07 Fossum for Suter 10-18-07)



10-11-07 & 12-17-07

James Widtfeldt

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APPENDICES

Appendix A

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 STATE CAPITOL BUILDING
LINCOLN, NE 68509
(402)471-3731
July 13, 2007

James Widtfeldt
P.O. Box 877
Atkinson, NE 68713 0877

IN CASE OF: A-06-001296, Widtfeldt v. Tax Equalization and Review Commission
The following internal procedural submission or filing by a party:
Pet of Petitioner Further Review & Brf submitted or filed 07/09/07
Has been reviewed by the court and the following order entered:
Petition for further review overruled.

Respectfully,
CLERK OF THE SUPREME COURT
AND COURT OF APPEALS

NOTICE -- Docket Fee for Petitions for Further Review

Appendix B

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 STATE CAPITOL BUILDING
LINCOLN, NE 68509
(402)471-3731
July 11, 2007
Fax 402-471-3480

James Widtfeldt
P.O. Box 877
Atkinson, NE 68713 0877

IN CASE OF: A-06-001296, A 07-0026, Widtfeldt v. Tax Equalization and Review Commission

On July 9, 2007 our office received a Petition for Further Review of Order bearing both case numbers referenced above and one check for $50. Our office filed the petition for further review in case No. 06-1296 becaue it was more recently disposed of.

We could not file the petition for further review in 07-026 because we did not have two docket fees.

(continues with material not relevant to appeal)

Appendix C

Details of case:
Case Name: State of Nebraska vs James W. Widtfeldt (spelling)
Complaint for: Criminal Trespass in the Second Degree Sec 28-521 RRS Neb Class III Misdemeanor
Location: Property owned by James Widtfeldt, leased to Isabel Sylva and Fernando Rivera (spelling)
Filed December 8, 2005
Disposition: Dismissal with Prejudice April 6, 2006, approximately.

Appendix D
s 25

21,219. Forcible entry and detainer; jurisdiction; exception.

The district and county courts shall have jurisdiction over complaints of unlawful and forcible entry into lands and tenements and the detention of the same and of complaints against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same. If the court finds that an unlawful and forcible entry has been made and that the same lands or tenements are held by

force or that the same, after a lawful entry, are held unlawfully, the court shall cause the party complaining to have restitution thereof. The court or the jury, as the situation warrants, shall inquire into the matters between the two litigants such as the amount of rent owing the plaintiff and the amount of damage caused by the defendant to the premises while they were occupied by him or her and render a judgment or verdict accordingly. **This section shall not apply to actions for possession of any premises subject to the provisions of the Uniform Residential Landlord and Tenant**

Act.

(Bold and underline added for emphasis -- does not include header and historical background)

Appendix E

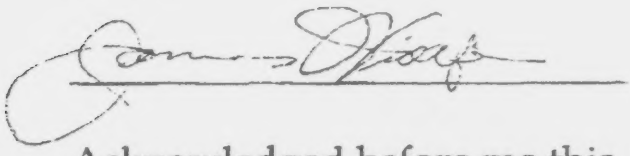
Entergy Arkansas, Inc. vs. Nebraska, 226 F. Supp 2d 1047 (Sep 30, 2002)

This case is very lengthy, and appellant directs the readers' attention to the total judgment amount and the criticism of former Governor Nelson for breaching the Compact Contract.

STATE OF NEBRASKA)

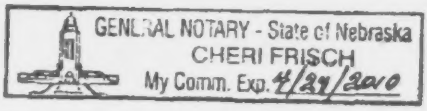
COUNTY OF HOLT) SS.

Comes now James Widtfeldt, and being first duly sworn, deposes and states that the Petition for Certiorari, with the numbered pages, contains 2,315 words according to "Wordcount" on Microsoft Word.



Acknowledged before me this 11th day of October, 2007.

Cheri Frisch Notary Public



APPENDIX F

NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
PO BOX 98910
2413 STATE CAPITOL BUILDING
LINCOLN, NE 68509
(402)471-3731
April 18, 2007

James A. Widtfeldt
PO Box 877
Atkinson, Nebraska 68713

IN CASE OF: a-07-000026, Widtfeldt v. Tax Equalization and Review Commission

The following internal procedureal submission or filing by a party:
Pet Petitioner for Further Review & Brf submitted or filed 03/27/07
Has been reviewed by the court and the following order entered:
Petition for further review overruled.

Appendix G:

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James A. WIDTFELDT, Appellant v.

HOLT COUNTY BOARD OF EQUALIZATION,

Appellee.

Case no. 05A-103, 05A-104, 15A-105, 05A-106, and 05A-107, DECISION AND ORDER AFFIRMING THE DECISION OF THE HOLT COUNTY BOARD OF EQUALIZATION GRANTING MOTION FOR REFUND IN PART.

(date of hearing, parties, and on page 11, third paragraph, reads as follows)

The Taxpayer urged the Commission to declare that standards, criteria, and rules for the valuation of real property in Nebraska as contained in the Constitution of the State of Nebraska, and the laws of Nebraska as enacted by the Nebraska Legislature were invalid because they did not provide for reductions in actual value for regulatory burdens and his difficulties with the judges. The Commission has only the authority granted by statute as it hears appeals. Creighton St. Joseph Regional Hosp. V. Nebraska Tax Equalization an Review Com'n, 260 Neb 750, 620 N.W. 2d 451 (2000). A reading of the applicable statutes does not disclose authority to act as urged by the Taxpayer."

(continuing to the fifth paragraph on page 11)

"The Taxpayer moved for a refund of filing the filing fee(s), (sic) because the hearing on the above captioned appeals were held simultaneously with the hearing on other appeals of the Taxpayer. The hearing on the above captioned appeals had been consolidated by order of the Commission. The Commission is authorized to refund filing fees. Neb. Rev. Stat. § 77-5015 (RR 2003) (sic). A refund can be granted if appeals are consolidated. Id. Consolidation is at the discretion of the Commission. Id. The Commission has adopted rules and regulations to prescribed the circumstances in which refund of a filing fee may occur. 442 Neb. Admin. Code, ch 5 § 31 ((01/05). (sic) The appeals in the Case Nos 05A-106 and 05A-107 meet he (sic) criteria found

in the Commission's rules and regulations and a refund in the amount of $25 should be made."

(continuing to page 12, subpart V the order)

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board . . . are affirmed.

(continuing to paragraph 4)

4. A refund of filing fees in the amount of $25 be made.

(continuing to paragraph 6 -- second of two paragraph 6's):

6. This decision shall only be applicable to tax year 2005.

(Signed and Sealed. October 17, 2006.)

(note that the $25 filing fee refund is never made

as ordered in Appendix G, further showing the appeals are timely.)

APPENDIX H

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James A. WIDTFELDT, Appellant v.

HOLT COUNTY BOARD OF EQUALIZATION,

Appellee.

Case no. 05r-393, DECISION AND ORDER AFFIRMING THE DECISION OF THE HOLT COUNTY BOARD OF EQUALIZATION DENYING MOTION FOR REFUND OF FILING FEE.

(continuing past material not relevant to the appeal)

(background material includes the following on page 2)

5. An Order for Hearing and Notice of Hearing issued on March 16, 2006, amended July 27, 2006, set a hearing of the Taxpayer's appeal for October 13, 1006 at 9:00 am CDST.

(page 7 of the order lists several citations to references on appraisals)

(page 9 provides)

IT IS THEREFORE ORDERED THAT:

1. The decision of the County Board determining value of the subject property as of the assessment date, January 1, 2005, is affirmed.

(page 10 provides date of the order)

(continuing past material not relevant to the appeal)

3. The motion for refund of filing fee is denied.

(continuing past material not relevant to the

appeal)

8. This order is effective for purposes of appeal October 17, 2006.

(note that the $25 filing fee refund is never made as ordered in Appendix G, further showing the appeals are timely)

H

Widtfeldt v. Tax Equalization and Review Com'n

Neb.App.,2007.

James **WIDTFELDT**, appellant,

v.

TAX EQUALIZATION AND REVIEW COMMISSION and Holt County Board of Equalization, appellees.

No. A-06-1296.

March 6, 2007.

Background: Taxpayer sought review of decisions by the Tax Equalization and Review Commission (TERC), finding that his applications, in at least 75 separate appeals of property tax determinations by county board of equalization, were incomplete because they lacked $25 filing fee, seeking to proceed on all appeals with one filing fee.

Holding: The Court of Appeals, Cassel, J.,

held that Court had no jurisdiction over appeal because lack of filing fee deprived TERC of jurisdiction.

Appeal dismissed.

West Headnotes

[1] Taxation 371 ⚿2634

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)7 Equalization of Assessments

371k2630 Equalization Among Counties or Other Municipalities by State Board or Officer

371k2634 k. Review of Proceedings. Most Cited Cases

Appellate review of a Tax Equalization and Review Commission (TERC) decision shall be conducted for error on the record.

[2] Appeal and Error 30 ⚿23

30 Appeal and Error

30II Nature and Grounds of Appellate Jurisdiction

30k23 k. Determination of Questions of Jurisdiction in General. Most Cited Cases

It is not only within the power but the duty of an appellate court to determine whether such appellate court has jurisdiction over the subject matter of an appeal.

[3] Mandamus 250 ⚿1

250 Mandamus

250I Nature and Grounds in General

250k1 k. Nature and Scope of Remedy in General. Most Cited Cases

Mandamus is defined as an extraordinary remedy, not a writ of right, issued to compel the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person, where (1) the relator has a clear right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act,

and (3) there is no other plain and adequate remedy available in the ordinary course of law.

[4] Administrative Law and Procedure

15A ⚿663

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak663 k. Jurisdiction. Most Cited Cases

When an administrative agency lacks subject matter jurisdiction over a claim, the courts also lack subject matter jurisdiction on appeal.

[5] Taxation 371 ⚿2629

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)7 Equalization of Assessments

371k2624 Equalization Among

Taxing or Assessment Districts by County or Other Local Board or Officer

371k2629 k. Review of Proceedings. Most Cited Cases

Taxation 371 ⚿2631

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)7 Equalization of Assessments

371k2630 Equalization Among

Counties or Other Municipalities by State Board or Officer

371k2631 k. In General. Most Cited Cases

A separate filing fee must accompany each appeal to the Tax Equalization and Review Commission (TERC). Neb.Rev.St. § § 77-1510, 77-5007, 77-5013.

[6] Taxation 371 ⚿2629

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)7 Equalization of Assessments

371k2624 Equalization Among Taxing or Assessment Districts by County or Other Local Board or Officer

371k2629 k. Review of Proceedings. Most Cited Cases

Taxation 371 ⊶2631

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)7 Equalization of Assessments

371k2630 Equalization Among Counties or Other Municipalities by State Board or Officer

371k2631 k. In General. Most Cited Cases

A filing fee must be timely received by the Tax Equalization and Review Commission (TERC) with every appeal to TERC, in order for TERC to have jurisdiction over the appeal. Neb.Rev.St. § 77-5013.

[7] Constitutional Law 92 ⇦2406

92 Constitutional Law

92XX Separation of Powers

92XX(B) Legislative Powers and Functions

92XX(B)4 Delegation of Powers

92k2405 To Executive, in General

92k2406 k. In General. Most Cited Cases

(Formerly 92k62(1))

Constitutional Law 92 ⚿2408

92 Constitutional Law

92XX Separation of Powers

92XX(B) Legislative Powers and Functions

92XX(B)4 Delegation of Powers

92k2405 To Executive, in General

92k2408 k. Rule Making. Most Cited Cases

(Formerly 92k62(3))

A legislative enactment may properly confer general powers upon an administrative agency and delegate to the agency the power to make rules and regulations concerning the details of the legislative purpose.

[8] Administrative Law and Procedure

15A ⚿417

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and

Agents

15AIV(C) Rules and Regulations

15Ak416 Effect

15Ak417 k. Force of Law. Most Cited Cases

Agency regulations, properly adopted and filed with the Secretary of State of Nebraska, have the effect of statutory law.

[9] Administrative Law and Procedure

15A ⚿390.1

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations

15Ak390 Validity

15Ak390.1 k. In General. Most Cited Cases

In order to be valid, an administrative rule or regulation must be consistent with the statute under which the rule or regulation is promulgated.

[10] Taxation 371 ⚿2629

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)7 Equalization of Assessments

371k2624 Equalization Among Taxing or Assessment Districts by County or Other Local Board or Officer

371k2629 k. Review of Proceedings. Most Cited Cases

Taxation 371 ⚿2634

371 Taxation

371III Property Taxes

371III(H) Levy and Assessment

371III(H)7 Equalization of Assessments

371k2630 Equalization Among Counties or Other Municipalities by State Board or Officer

371k2634 k. Review of Proceedings. Most Cited Cases

Court of Appeals lacked jurisdiction to hear appeal from decision by the Tax

Equalization and Review Commission (TERC), finding that taxpayer's appeals of property tax determinations by county board of equalization were incomplete because they lacked $25 filing fee, given that taxpayer's failure to timely tender required filing fee deprived TERC of jurisdiction. Neb.Rev.St. § 77-1510.

**296 *Syllabus by the Court*

*410 1. **Taxation: Judgments: Appeal and Error.** Appellate review of a Tax Equalization and Review Commission decision shall be conducted for error on the

record.

2. **Jurisdiction: Appeal and Error.** It is not only within the power but the duty of an appellate court to determine whether such appellate court has jurisdiction over the subject matter of an appeal.

297 3. **Administrative Law: Jurisdiction: Appeal and Error. When an administrative agency lacks subject matter jurisdiction over a claim, the courts also lack subject matter jurisdiction on appeal.

4. **Taxation: Valuation: Real Estate.** For protests of real property in tax valuation cases, a protest shall be filed for each parcel.

5. **Taxation: Jurisdiction: Appeal and Error.** The Tax Equalization and Review Commission obtains exclusive jurisdiction over an appeal when (1) the commission has the power or authority to hear the appeal; (2) an appeal is timely filed; (3) the filing fee, if applicable, is timely

received and thereafter paid; and (4) in the case of an appeal, a copy of the decision, order, determination, or action appealed from, *411 or other information that documents the decision, order, determination, or action appealed from, is timely filed.

6. **Taxation: Jurisdiction: Fees: Appeal and Error.** A filing fee must be timely received by the Tax Equalization and Review Commission in order for the commission to have jurisdiction over the

appeal.

7. **Administrative Law: Statutes.** A legislative enactment may properly confer general powers upon an administrative agency and delegate to the agency the power to make rules and regulations concerning the details of the legislative purpose.

8. **Administrative Law.** Agency regulations, properly adopted and filed with the Secretary of State of Nebraska,

have the effect of statutory law.

9. **Administrative Law: Statutes.** In order to be valid, a rule or regulation must be consistent with the statute under which the rule or regulation is promulgated.

James **Widtfeldt**, pro se.

Steven A. Keetle for appellee Tax Equalization and Review Commission.

IRWIN, CARLSON, and CASSEL,

Judges.CASSEL, Judge.

INTRODUCTION

As we have explained on several previous occasions, we closely examine all cases in their initial stages to ensure that jurisdiction has been properly conferred and to quickly terminate appeals where we lack jurisdiction. See, e.g., ***Widtfeldt v. Holt Cty. Bd. of Equal.***, 12 Neb.App. 499, 677 N.W.2d 521 (2004). Because James **Widtfeldt** failed to submit a separate filing

fee with each appeal, the Tax Equalization and Review Commission (TERC) lacked jurisdiction over each appeal from the lower tribunal and we lack jurisdiction over **Widtfeldt's** attempt to appeal to this court.

BACKGROUND

On June 30, 2006, **Widtfeldt** filed at least 75 separate property valuation protests with the Holt County Board of Equalization (the

Board) regarding tax year 2006 values placed on his properties. On July 24, the Board denied his protests, at least as to the 75 properties which pertain to the case before us. On August 21, **Widtfeldt** appealed the Board's denials to TERC. **Widtfeldt** filed a separate appeal form for each decision he appealed; he ***412** consequently filed at least 75 separate appeals-one for each parcel of property at issue.

On October 17, 2006, TERC's legal counsel

sent a letter to **Widtfeldt** explaining that TERC received **Widtfeldt's** appeals, but that "75 of these appeals" were incomplete because they were missing the required**298 $25 filing fee. (We infer from the quoted language that at least one other appeal may have been complete.) One of the 75 appeals was also missing a copy of the final decision from which **Widtfeldt** was attempting to appeal. The letter informed **Widtfeldt** that because 75 of his appeals were incomplete, TERC was returning the incomplete appeals to him

and TERC would be unable to process the appeals because the time for filing them had expired. The letter explained that the dead-line for filing appeals was August 24. The letter also noted that the initial documents sent by **Widtfeldt** were postmarked August 22 and received by TERC on August 23 and that a second set of materials sent by **Widtfeldt** containing the above-mentioned missing copy of the final decision, but which did not complete the appeals, was postmarked August 24 and received by TERC on August 28.

On November 17, 2006, **Widtfeldt** filed a petition for review in this court pursuant to Neb.Rev.Stat. § 77-5019 (Cum.Supp.2006). He alleges in his petition that TERC should have allowed him to proceed on all of his appeals with one filing fee instead of requiring a filing fee for each appeal. He requests that we enter an order granting him permission to proceed on all of his appeals to TERC with one filing fee.

STANDARD OF REVIEW

[1][2] Appellate review of a TERC decision shall be conducted for error on the record. *Falotico v. Grant Cty. Bd. of Equal.*, 262 Neb. 292, 631 N.W.2d 492 (2001). It is not only within the power but the duty of an appellate court to determine whether such appellate court has jurisdiction over the subject matter of an appeal. See *Washington Cty. Bd. of Equal. v. Rushmore Borglum*, 11 Neb.App. 377, 650 N.W.2d 504 (2002).

ANALYSIS

[3] We begin by observing that **Widtfeldt's** petition for review filed with this court expressly invokes § 77-5019, which states: "Nothing *413 in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law." We are not presented, for example, with an action for writ of mandamus. Mandamus is defined as an extraordinary remedy, not

a writ of right, issued to compel the performance of a purely ministerial act or duty, imposed by law upon an inferior tribunal, corporation, board, or person, where (1) the relator has a clear right to the relief sought, (2) there is a corresponding clear duty existing on the part of the respondent to perform the act, and (3) there is no other plain and adequate remedy available in the ordinary course of law. *Crouse v. Pioneer Irr. Dist.*, 272 Neb. 276, 719 N.W.2d 722 (2006). Thus, our jurisdiction relies solely upon the right of

review conferred by § 77-5019, which jurisdiction in turn depends upon the existence of jurisdiction in the tribunal below.

[4] When an administrative agency lacks subject matter jurisdiction over a claim, the courts also lack subject matter jurisdiction on appeal. *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb. 905, 620 N.W.2d 90 (2000); *R-D Investment Co. v. Board of Equal. of Sarpy Cty.*, 247 Neb. 162, 525 N.W.2d 221 (1995). We therefore

examine the jurisdictional basis for **Widtfeldt's** 75 appeals before TERC, which examination requires us to review the particular statutes establishing the procedures before the Board and governing the right to appeal to TERC.

Widtfeldt's petition for review asserts that he should be allowed to proceed on all of his appeals although he submitted only one filing fee, because he owns all of the **299 parcels of land at issue, all of the parcels are located in the same county, and

there are similar grounds to appeal the Board's decision in each case. We conclude that **Widtfeldt's** position is not supported by the law.

The law requires a protesting taxpayer to submit a separate protest for each parcel of real estate. Neb.Rev.Stat. § 77-1502 (Cum.Supp.2006) authorizes a taxpayer to challenge the value placed on his or her real property before the county board of equalization. "For protests of real property, a protest shall be filed for each

parcel." *Id.* The record in the case before us shows 75 instances of such protests. In each instance, **Widtfeldt** submitted a separate protest form to the Board. A county board of equalization is then required to render a decision on the protest. See *id.* Each of the protest forms provides a place for the decision of the ***414** county board of equalization to be recorded. In the instant case, the Board recorded its decision regarding each parcel in the designated place on the form submitted for that particular parcel.

The statutes governing appeals from a county board of equalization to TERC now contemplate a separate appeal from each decision of the county board of equalization and require a separate filing fee for each appeal. Neb.Rev.Stat. § 77-5007 (Cum.Supp.2006) generally confers authority to TERC to hear and determine appeals from any county board of equalization. Neb.Rev.Stat. § 77-1510 (Cum.Supp.2006) authorizes an appeal to TERC from "[a]ny action of the county

board of equalization." Neb.Rev.Stat. § 77-5013 (Cum.Supp.2006) sets forth specific requirements which must be met before TERC acquires jurisdiction over such appeals and provides:

(1) [TERC] obtains exclusive jurisdiction over an appeal ... when:

(a) [TERC] has the power or authority to hear the appeal ...;

(b) An appeal ... is timely filed;

(c) The filing fee, if applicable, is timely received and thereafter paid; and

(d) In the case of an appeal, a copy of the

decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

....

(3) The filing fee for each appeal ... filed with [TERC] is twenty-five dollars ....

(4) The form and requirements for execution of an appeal ... may be specified by [TERC] in its rules and regulations.

For an appeal from a decision of a county board of equalization to be timely, it must be filed with TERC "on or before August 24." § 77-1510.

[5] Giving effect to the purpose and intent of the Legislature as ascertained from the entire language of the above statutes considered in their plain, ordinary, and popular sense, see *415 *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, 260 Neb.

905, 620 N.W.2d 90 (2000), we determine that a separate filing fee must accompany each appeal to TERC. If a fee is not timely submitted with the appeal, TERC will not have jurisdiction over the appeal.

[6] We recognize that § 77-5013 has been amended in two instances since the decision of the Nebraska Supreme Court in *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm., supra.* In that case, the court determined that § 77-5013 did not require that a filing fee be paid at the **300 outset

to confer jurisdiction upon TERC. The Supreme Court stated in its decision that if the Legislature intended for the $25 filing fee to be a jurisdictional requirement, it could have included jurisdictional language in § 77-5013. Because it did not, the Supreme Court refused to read additional requirements into the statute. However, when *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.* was decided, § 77-5013 contained none of the jurisdictional language that the current version sets forth. Since the Supreme Court issued its

decision in *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.*, the Legislature has added jurisdictional language to § 77-5013. See 2001 Neb. Laws, L.B. 170, and 2004 Neb. Laws, L.B. 973. Clearly, the Legislature responded to the court's decision in *Creighton St. Joseph Hosp. v. Tax Eq. & Rev. Comm.* and added language demonstrating its intent to make the requirements of § 77-5013(1) mandatory and jurisdictional. We hold that under the current version of § 77-5013, a filing fee must be timely received by TERC in order

for TERC to have jurisdiction over the appeal.

[7][8][9] Regulations adopted by TERC also address the requirements for perfecting an appeal with TERC. Before discussing the regulations, we acknowledge that a legislative enactment may properly confer general powers upon an administrative agency and delegate to the agency the power to make rules and regulations concerning the details of the legislative purpose. *City of Omaha v. Kum & Go*, 263

Neb. 724, 642 N.W.2d 154 (2002). Agency regulations, properly adopted and filed with the Secretary of State of Nebraska, have the effect of statutory law. *Id.* In order to be valid, a rule or regulation must be consistent with the statute under which the rule or regulation is promulgated. *Id.*

Neb.Rev.Stat. § 77-5021 (Reissue 2003) grants TERC the power to adopt and promulgate rules and regulations to carry ***416** out its constitutional or statutory purposes, powers, or authority. TERC has

adopted several regulations that are relevant to the issues before us. One regulation states that a filing fee must accompany an appeal to TERC and that an appeal filed without a filing fee will not be accepted by TERC and will not be deemed perfected. See 442 Neb. Admin. Code, ch. 5, § 001.05 (2005). Another regulation provides that TERC lacks jurisdiction over appeals or petitions which are filed out of time or which otherwise fail to comply with § 77-5013. 442 Neb. Admin. Code, ch. 5, § 001.06 (2005). The regulations further

support our determination that TERC lacked jurisdiction over **Widtfeldt's** appeals, and therefore, we also lack jurisdiction to hear **Widtfeldt's** claims.

CONCLUSION

[10] The relevant statutes require a separate tax valuation protest for each parcel of real estate and a separate filing fee for each appeal from a county board of equalization decision to TERC. Because TERC did not

timely receive the required filing fee in each of the 75 appeals, it lacked jurisdiction over the appeals. It necessarily follows that we lack jurisdiction over the appeal from TERC. We therefore dismiss **Widtfeldt's** appeal.

APPEAL DISMISSED.

Neb.App.,2007.

Widtfeldt v. Tax Equalization and Review Com'n

15 Neb.App. 410, 728 N.W.2d 295

END OF DOCUMENT

STATE OF NEBRASKA)

COUNTY OF HOLT) SS.

Comes now James Widtfeldt, and being first duly sworn, deposes and states that the Petition for Certiorari, with the numbered pages, contains 2,315 words according to "Wordcount" on Microsoft Word without Appendix or 12-17-07 changes fewer than about 15 words.

James Widtfeldt

Acknowledged before me this 17th day of December, 2007.

GENERAL NOTARY - State of Nebraska
CHERI FRISCH
My Comm. Exp. 4/24/2010

Cheri Frisch Notary Public